In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 1372

SAM L. McDONALD, ET AL., APPELLANTS

vs.

BOARD OF ELECTION COMMISSIONERS OF CHICAGO, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 67 C 494

SAM L. MCDONALD and ANDREW BYRD on behalf of themselves and all other persons similarly situated, PLAINTIFFS

vs.

BOARD OF ELECTION COMMISSIONERS OF CHICAGO, SIDNEY T. HOLZMAN, Chairman, MARIE H. SUTHERS, Commissioner, and FRANCIS P. CANARY, Commissioner, DEFENDANTS

$15.
JUDGE AUSTIN

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTION
—Filed March 29, 1967

COUNT I

1.

Jurisdiction is based upon Title 28, United States Code, Sections 1331, 1343(3), 1343(4), 2201, 2202, 2281 and 2284. The amount in controversy exceeds $10,000.00 exclusive of interest and costs. Plaintiff's cause of action arises under the Federal Civil Rights Act, Title 42, United States Code, Section 1983, and under the Fourteenth Amendment to the United States Constitution.

2.

(a) Plaintiffs are Sam L. McDonald and Andrew Byrd. Plaintiffs are duly qualified and registered voters in Chicago, Illinois within the provisions of Chapter 46, Section 3-1, Ill. Rev. Stat. (1965). Plaintiffs are unsentenced inmates of the Cook County Jail, awaiting trial, who are actually incapable of being present at the polls of their

election precincts on election day. Plaintiff Sam L. McDonald is temporarily committed to jail without bail for the alleged offense of murder. Plaintiff Andrew Byrd is temporarily committed to jail for failure to provide bail in the amount of $5,000.00.

(b) Plaintiffs bring this class action on their own behalf and on behalf of all other persons similarly situated pursuant to Rule 23(a) and (b)(2), Federal Rules of Civil Procedure. The class is composed of the unsentenced inmates of the Cook County Jail, awaiting trial, who are duly registered and qualified voters in Chicago, Illinois, and who are actually incapable of being present at the polls of their election precincts on election day, because of their temporary commitment to jail, either without bail or for failure to post bail in a designated amount. This class is so numerous that joinder of all members is impracticable. There are questions of law and fact common to the class. The claims of plaintiffs are typical of the claims of the class. Plaintiffs will fairly and adequately protect the interests of the class. In addition, defendants have refused to act on grounds generally applicable to the class, thereby making appropriate declaratory and final injunctive relief with respect to the class as a whole.

3.

This action is brought against the Board of Election Commissioners of Chicago and its three members, to wit: Sidney T. Holzman, Chairman, Marie H. Suthers, Commissioner, and Francis P. Canary, Commissioner, who are charged with the duty of furnishing ballots for elections at which public officials are elected, in Chicago, Illinois.

4.

On March 29, 1967, plaintiffs, and each of them, by their attorney, Stanley A. Bass, made timely application personally to defendants for absentee ballots on the ground that each plaintiff will be physically incapable of being present at the polls of his election precinct on election day, April 4, 1967.

5.

Defendants, acting in accordance with the Illinois statutes applicable to absentee ballots, denied plaintiffs' applications for absentee ballots for the stated reason that neither plaintiff is a person who is unable to be present at the polls of his election precinct because of "physical incapacity", within the meaning of Chapter 46, Sections 19-1 and 19-3, Ill. Rev. Stat. (1965).

6.

The Illinois statutes applicable to absentee ballots are unconstitutional on their face under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, insofar as they require denial of absentee ballots to plaintiffs and other persons similarly situated.

(a) A classification between voters who are medically incapacitated and voters who are judicially incapacitated by reason of temporary commitment to jail, awaiting trial on an alleged offense, either without bail or for failure to provide bail in a designated amount, is arbitrary and an invidious discrimination, and bears no rational or reasonable relation to the salutary purpose of granting absentee ballots to qualified, registered voters who are actually incapable of being present at the polls of their election precinct on election day.

(b) Plaintiffs would be entitled, under Illinois statutes, to absentee ballots if they were temporarily incarcerated, awaiting trial, in a jail in a county other than Cook County.

(c) Plaintiff Andrew Byrd is precluded from voting by an official act, as a direct result of his financial inability, just as effectively as if a poll tax had been levied as a prerequisite to voting.

7.

The appropriate remedy is not to invalidate the entire Illinois statutory scheme applicable to absentee ballots, but rather, to require that absentee ballots be made available to plaintiffs and other persons similarly situated, as well as to those expressly covered by the terms of the statutes.

8.

Plaintiffs have no plain, adequate or complete remedy at law. Unless the relief requested herein is granted, plaintiffs will suffer irreparable injury and harm by virtue of defendants' refusal to act as set forth above.

WHEREFORE, plaintiffs pray:

1. That pursuant to Title 28, United States Code, Sections 2281 and 2284, a three-judge Court be immediately convened to hear and determine this proceeding.

2. That the Court enter a judgment declaring that the Illinois statutes applicable to absentee ballots are unconstitutional on their face under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, insofar as they require denial of absentee ballots to plaintiffs and other duly qualified and registered voters in Chicago, Illinois, similarly situated.

3. That a permanent injunction issue: Restraining defendants and each of them, their agents, employees and attorneys, and all others acting in concert with them, and their successors from refusing to grant timely applications for absentee ballots made by plaintiffs and other duly qualified and registered voters in Chicago, Illinois similarly situated.

4. That pending the final hearing and determination of this class action for declaratory judgment and permanent injunction, this Court enter a preliminary order directing defendants to deliver to the plaintiffs, Sam L. McDonald and Andrew Byrd absentee ballots to be cast in the April 4, 1967 Election for Municipal Offices in Chicago, Illinois.

5. That plaintiffs be given all other relief as the Court may deem appropriate.

COUNT II

1.

Jurisdiction is based upon the doctrine of "pendent jurisdiction". Plaintiffs' cause of action arises under Article VII, Section 1 of the Constitution of the State of Illinois, and under Chapter 46, Section 19-1, Ill. Rev. Stat. (1965).

2-4.

Plaintiffs incorporate and re-allege the allegations contained in paragraphs 2, 3 and 4 of Count I, as and for paragraphs 2 through 4 of this Count II.

5.

Defendants, purporting to act pursuant to the Illinois statutes applicable to absentee ballots, denied plaintiffs' applications for absentee ballots for the stated reason that neither plaintiff is a person who is unable to be present at the polls of his election precinct because of "physical incapacity", within the meaning of Chapter 46, Sections 19-1 and 19-3, Ill. Rev. Stat. (1965).

6.

Article VII, Section 1 of the Constitution of the State of Illinois, provides:

> SUFFRAGE
>
> Qualifications For Voting
>
> Every person having resided in this State one year, in the county ninety days, and in the election district thirty days next preceding any election therein, who was an elector in this State on the first day of April, in the year of our Lord one thousand eight hundred and forty eight, or obtained a certificate of naturalization, before any court of record in this State, prior to the first day of January, in the year of our Lord one thousand eight hundred and seventy, or who shall be a male citizen of the United States, above the age of twenty-one years, shall be entitled to vote as such election.

7.

Chapter 46, Section 19-1, Ill. Rev. Stat. (1965), provides:

Right to vote

Any qualified elector of the State of Illinois (other than one to whom an absentee ballot has been delivered or mailed pursuant to Article 20 of this Act) having duly registered where such registration is required who expects to be absent from the county in which he is a qualified elector or who because of physical incapacity or the tenets of his religion in the observance of a religious holiday will be unable to be present at the polls on the day of holding any special, general or primary election at which any presidential preference is indicated or any candidates are chosen or elected for any Congressional, State, District, County, Town, City, Village, Precinct or Judicial offices or at which questions of public policy are submitted, may vote at such election as hereinafter in this Atricle provided.

8.

By virtue of the above cited provisions, and because plaintiffs' temporary commitment to Cook County Jail pending trial renders each of them physically incapable of being present at the polls of his election precinct on election day, plaintiffs are entitled, under a liberal construction of the Illinois statutes applicable to absentee ballots, to be furnished an absentee ballot upon timely request.

9.

Defendants refusal to grant plaintiffs' timely applications for absentee ballots violates the Constitution and Laws of the State of Illinois.

10.

Plaintiffs have no plain, adequate or complete remedy at law. Unless the relief requested herein is granted, plaintiffs will suffer irreparable injury and harm by virtue of defendants refusal to act as set forth above.

WHEREFORE, plaintiffs pray:

1. That pursuant to Title 28, United States Code, Sections 2281 and 2284, a three-judge Court be immediately convened to hear and determine this proceeding.

2. That the Court enter a judgment declaring that plaintiffs and other persons similarly situated are entitled, under the Constitution and Laws of the State of Illinois, to absentee ballots upon timely request.

3. That a permanent injunction issue: Restraining defendants and each of them, their agents, employees and attorneys, and all others acting in concert with them, and their successors from refusing to grant timely applications for absentee ballots made by plaintiffs and other duly qualified and registered voters in Chicago, Illinois similarly situated.

4. That pending the final hearing and determination of this class action for declaratory judgment and permanent injunction, this Court enter a preliminary order directing defendants to deliver to the plaintiffs, Sam L. McDonald and Andrew Byrd, absentee ballots to be cast in the April 4, 1967 Election for Municipal Offices in Chicago, Illinois.

5. That plaintiffs be given all other relief as the Court may deem appropriate.

/s/ Stanley A. Bass
/s/ Melvin B. Goldberg

Of Counsel:

CIVIL LEGAL AID SERVICE
Cook County Jail
2600 South California Avenue
Chicago, Illinois 60608
523-0101 ext. 30

UNITED STATES OF AMERICA)
) SS
NORTHERN DISTRICT OF ILLINOIS)

AFFIDAVIT

Sam L. McDonald, being first duly sworn on oath, deposes and says that he has read the foregoing Complaint, that he knows the contents thereof, and that the same are true in substance and in fact.

/s/ Sam Lee McDonald
Affiant

Subscribed and Sworn to
Before me this 29th day
of March, 1967.

/s/ Carrie Beal
Notary Public
My Commission Expires
5-1-70

[SEAL]

UNITED STATES OF AMERICA)
) SS
NORTHERN DISTRICT OF ILLINOIS)

AFFIDAVIT

Andrew Byrd, being first duly sworn on oath, deposes and says that he has read the foregoing Complaint, that he knows the contents thereof, and that the same are true in substance and in fact.

/s/ Andrew Byrd
Affiant

Subscribed and Sworn to
Before me this 29th day
of March, 1967.

/s/ Carrie Beal
Notary Public
My Commission Expires
5-1-70

[SEAL]

Form 300PI

Voter's Number

JUDGES OF ELECTION—This application for a ballot, called the "Certificate of a Registered Voter," must be placed on the application under with other applications.

☐ Challenged

AFFIDAVIT AND APPLICATION FOR BALLOT
(PHYSICALLY INCAPACITATED ELECTOR)

To be voted at the Municipal election in the County of Cook and State of Illinois, in the 49th precinct of the 3rd ward in Chicago Municipality

State of Illinois
County of Cook } ss.

I, Sam L. McDonald, being duly sworn, depose and say that I am a resident of the 49th precinct of the 3rd ward in Chicago Municipality, residing at 4525 South Federal in said city or village in the County of Cook and State of Illinois; that I have lived at said address for five months last past; that I am lawfully entitled to vote in such precinct at the Municipal election to be held therein on April 6, 1967; that I shall be physically incapable of being present at the polls of such precinct on the date of holding such election for the following reasons: I am incarcerated in jail awaiting trial for an alleged offense, for lack of bail.

I hereby make application for an official ballot or ballots to be voted by me at such election if I am so physically incapacitated, and I agree that I shall return said ballot or ballots to the official issuing the same in sufficient time for such official to deliver said ballot or ballots to the proper polling place prior to the closing of the polls on the date of the election.

Sam L. McDonald
Signature of Applicant

P. O. ADDRESS TO WHICH BALLOT IS TO BE MAILED:

4525 South Federal
Name of Street

Chicago,
Name of City

Illinois
Name of State

Subscribed and sworn to by Sam L. McDonald who is personally known to me, before me this 29th day of March A. D. 1967

Official Capacity

REGISTRATION RECORD CHECKED BY _____ Employee

R. of R. C. _____ Initials of Judge Composing Board

RETURN TO: BOARD OF ELECTION COMMISSIONERS, ROOM 806, CITY HALL, CHICAGO, ILLINOIS 60602

13

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PENALTY PROVISIONS

ARTICLE 29A: Secs. 1, 3, & 5 of the Election Laws of Illinois

29A-1. "Any person who knowingly does any act prohibited or fails to do any act required by The Election Code, or who knowingly does any act with the intent that another shall do an act prohibited by The Election Code or fail to do an act or exercise a privilege required or conferred by The Election Code, shall be guilty of an offense within the meaning of Section 2-12 of the Illinois Criminal Code of 1961 and shall be fined not to exceed $5,000 or imprisoned in a penal institution other than the penitentiary not to exceed one year, or in the penitentiary from one to five years, or both fined and imprisoned."

29A-3. "Any person who makes a false statement, material to the issue or point in question, which he does not believe to be true, in any affidavit or sworn oral declaration required by any provision of The Election Code shall be guilty of perjury within the meaning of Section 32-2 of the Illinois Criminal Code of 1961 and punished accordingly."

29A-5. "Any person convicted of an offense under any provision of The Election Code and sentenced to imprisonment in the penitentiary shall be deemed infamous and shall forever thereafter be rendered incapable of holding any office of honor, trust or profit, of voting at any election, or serving as a juror, unless he or she is again restored to such rights by the terms of a pardon for the offense or otherwise according to the law."

14

Have the Attending Physician or Christian Science Practitioner complete the proper affidavit.

AFFIDAVIT OF ATTENDING PHYSICIAN

State of _____ } ss.
County of _____ }

I, _____, do solemnly swear that I am a physician, duly licensed to practice medicine in the State of Illinois; that I have examined _____; and that I verily believe that he/she will be physically incapable of being present at the polls on the 4th day of April, 1967 for the following reasons: _____

_____

_____
(Signature)

_____
(Date Licensed)

Subscribed and sworn to by _____ who is personally known to me, before me this _____ day of _____, A.D. 1967.

_____
Official Capacity

AFFIDAVIT OF ATTENDING CHRISTIAN SCIENCE PRACTITIONER

State of _____ } ss.
County of _____ }

I, _____, do solemnly swear that I am an authorized Christian Science Practitioner, listed in the Christian Science Journal, living and residing in the State of Illinois; that I am treating _____; and, that I verily believe that he/she will be physically incapable of being present at the polls on the 4th day of April, 1967 for the following reasons: _____

_____

_____ C.S.
Authorized Christian Science Practitioner

Subscribed and sworn to before me by _____ who is personally known to me, this _____ day of _____, A.D., 1967

_____
Official Capacity

15

AFFIDAVIT OF DEPUTY WARDEN

WALTER P. MARKOWSKI, being first duly sworn on oath, deposes and says: I am the Deputy Warden of the Cook County Jail, Chicago, Illinois. I have in my custody one Sam L. McDonald, who was committed to jail on January 18, 1967, for lack of bail, awaiting trial on an alleged criminal offense. His next scheduled court date is March 31, 1967. Further affiant sayeth not.

Walter P. Markowski
Affiant

Subscribed and Sworn to Before me this 29th day of March, 1967.

Jessie Bland
Notary Public

My Commission Expires 5-12-70

Form 300PI

Voter's Number

ORDER OF ELECTION—This application for a ballot, called the "Certificate of a Registered Voter," must be placed on the application binder with other applications.

☐ Challenged

AFFIDAVIT AND APPLICATION FOR BALLOT
(PHYSICALLY INCAPACITATED ELECTOR)

To be voted at the Municipal election in the County of Cook and State of Illinois, in the 28th precinct of the 16th ward in Chicago Municipality

State of Illinois } ss.
County of Cook }

I, Andrew Byrd do solemnly swear that I am a resident of the 28th precinct of the 16th ward in Chicago Municipality, residing at 1111 W. 69th St. in said city or village in the County of Cook and State of Illinois; that I have lived at said address for one year next last past; that I am lawfully entitled to vote in such precinct at the Municipal election to be held therein on April 4, 1967; that I shall be physically incapable of being present at the polls of such precinct on the date of holding such election for the following reasons: I am incarcerated in jail awaiting trial for an alleged offense, for lack of bail money.

I hereby make application for an official ballot or ballots to be voted by me at such election if I am so physically incapacitated, and I swear that I shall return said ballot or ballots to the official having the same in sufficient time for such official to deliver said ballot or ballots to the proper polling place prior to the closing of the polls on the date of the election.

Andrew Byrd
Signature of Applicant

P. O. ADDRESS TO WHICH BALLOT IS TO BE MAILED:

1111 W. 69th St.
Name of Street
Chicago
Name of City
Illinois
Name of State

Subscribed and sworn to by Andrew Byrd who is personally known to me, before me this 29th day of March A. D. 1967

Clerk Asst. Supt.
Official Capacity

REGISTRATION RECORD CHECKED BY _____ Employee for _____ R. of R. C. _____ Initials of Judge Comparing Signatures

RETURN TO: BOARD OF ELECTION COMMISSIONERS, ROOM 802, CITY HALL, CHICAGO, ILLINOIS 60602

5-1-70

17

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PENALTY PROVISIONS

ARTICLE 29A: Secs. 1, 3, & 5 of the Election Laws of Illinois

29A-1. "Any person who knowingly does any act prohibited or fails to do any act required by The Election Code, or who knowingly does any act with the intent that another shall do an act prohibited by The Election Code or fail to do an act or exercise a privilege required or conferred by The Election Code, shall be guilty of an offense within the meaning of Section 2-12 of the Illinois Criminal Code of 1961 and shall be fined not to exceed $5,000 or imprisoned in a penal institution other than the penitentiary not to exceed one year, or in the penitentiary from one to five years, or both fined and imprisoned."

29A-3. "Any person who makes a false statement, material to the issue or point in question, which he does not believe to be true, in any affidavit or sworn oral declaration required by any provision of The Election Code shall be guilty of perjury within the meaning of Section 32-2 of the Illinois Criminal Code of 1961 and punished accordingly."

29A-5. "Any person convicted of an offense under any provision of The Election Code and sentenced to imprisonment in the penitentiary shall be deemed infamous and shall forever thereafter be rendered incapable of holding any office of honor, trust or profit, of voting at any election, or serving as a juror, unless he or she is again restored to such rights by the terms of a pardon for the offense or otherwise according to the law."

Have the Attending Physician or Christian Science Practitioner complete the proper affidavit.

AFFIDAVIT OF ATTENDING PHYSICIAN

State of _____ } ss.
County of _____ }

I, _____, do solemnly swear that I am a physician, duly licensed to practice
divine in the State of Illinois; that I have examined _____; and
that I verily believe that he/she will be physically incapable of being present at the polls on the 4th day of April, 1967 for the following
reasons: _____

_____

_____ (Signature)

_____ (Date Licensed)

Subscribed and sworn to by _____ who is personally known to me, before me
this _____ day of _____ A.D. 1967. _____ Official Capacity

AFFIDAVIT OF ATTENDING CHRISTIAN SCIENCE PRACTITIONER

State of _____ } ss.
County of _____ }

I, _____, do solemnly swear that I am an authorized Christian Science Practitioner, listed in the Christian Science Journal, living and residing in the State of Illinois; that I am treating _____; and, that I verily believe that he/she will be physically incapable of being present at the polls on the 4th day of April, 1967 for the following reasons: _____

_____

_____ C.S.
Authorized Christian Science Practitioner

Subscribed and sworn to before me by _____
who is personally known to me, this _____ day of _____ A.D., 1967 19

_____ Official Capacity

AFFIDAVIT OF DEPUTY WARDEN

WALTER P. MADOWSKI, being first duly sworn on oath, deposes and says: I am the Deputy Warden of the Cook County Jail, Chicago, Illinois. I have in my custody one Andrew Byrd, who was committed to jail on March 11, 1967, for lack of bail money, awaiting trial for an alleged misdemeanor offense. His next scheduled court date is April 12, 1967. Further affiant sayeth not.

Walter P. Madowski
Affiant

Subscribed and Sworn to
before me this 20th day
of April, 1967.

20

Clarine Reed
Notary Public

My Commission Expires
5-1-70

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 67 C 494

SAM L. MCDONALD and ANDREW BYRD, on behalf of themselves and all other persons similarly situated, PLAINTIFFS

vs.

BOARD OF ELECTION COMMISSIONERS OF CHICAGO, SIDNEY T. HOLZMAN, Chairman, MARIE H. SUTHERS, Commissioner, and FRANCIS P. CANARY, Commissioner, DEFENDANTS

DRAFT ORDER—March 30, 1967

This cause comes before the Court on motion of the named plaintiffs, Sam L. McDonald and Andrew Byrd, for temporary relief in this matter,

And the Court having jurisdiction over the subject matter and the parties herein,

And it appearing to the Court that the two named plaintiffs, Sam L. McDonald and Andrew Byrd only, should be furnished, as emergency relief pending full hearing and final determination of this cause, absentee ballots to be cast in the Election for Municipal Offices in Chicago, Illinois, on April 4, 1967,

WHEREFORE, it is ORDERED that defendants, through their agents, are directed to deliver to the two named plaintiffs Sam L. McDonald and Andrew Byrd, through their attorney, Stanley A. Bass, absentee ballots to be cast in the April 4, 1967 Election for Municipal Offices in Chicago, Illinois.

ENTER:

/s/ R. B. Austin
United States District Judge

DATED: March 30, 1967

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 67 C 494

SAM L. MCDONALD and ANDREW BYRD on behalf of themselves and all other persons similarly situated, PLAINTIFFS

vs.

BOARD OF ELECTION COMMISSIONERS OF CHICAGO, SIDNEY T. HOLZMAN, Chairman, MARIE H. SUTHERS, Commissioner, and FRANCIS P. CANARY, Commissioner, DEFENDANTS

ANSWER—Filed April 18, 1967

COUNT I

Now come the Defendants, BOARD OF ELECTION COMMISSIONERS OF CHICAGO, SIDNEY T. HOLZMAN, Chairman, MARIE H. SUTHERS, Commissioner, and FRANCIS P. CANARY, Commissioner, by their Attorney, STANLEY T. KUSPER, JR., and in Answer to the Complaint for Equitable Relief state as follows:

1.

The Defendants deny each and every allegation of Paragraph 1 of the Complaint.

2.

(a) The Defendants admit that the two named Plaintiffs herein are duly qualified and registered voters in the City of Chicago, Illinois. As to the other allegations contained in paragraph 2(a) these Defendants state that they have no information sufficient to form a belief as to the truth or accuracy of such allegations and they therefore deny same.

(b) These Defendants state that they have no information sufficient to form a belief as to the truth or accuracy of the allegations contained in paragraph 2(b) and they therefore deny same.

3.

The Defendants admit the allegations contained in paragraph 3 of the Complaint. Defendants allege that pursuant to Chapter 46, Article 29A, Section 1; Article 29A, Section 2; Article 29A, Section 5, Illinois Revised Statutes (1965), these Defendants are subject to criminal provisions and sanctions, the violation of each could lead to conviction and sentencing for an infamous crime.

4.

The Defendants admit that on March 29, 1967 Stanley A. Bass presented a purported application for absentee ballot, on behalf of each of the named Plaintiffs, to a clerk in the office of the Board of Election Commissioners. Defendants deny that the application was proper, both in manner of presentation and in substance, and further allege that it was not presented personally by the Plaintiffs herein as required by Chapter 46, Article 19, Section 2, Illinois Revised Statutes (1965).

5.

These Defendants admit the allegations contained in paragraph 5 of the Complaint and allege that they at all times acted in strict compliance with the statutes of Illinois in such cases made and provided, and further allege that their action was the only action permitted by Illinois law.

6.

These Defendants deny each and every allegation contained in paragraph 6 of the Complaint, sub paragraphs (a) through (c) both inclusive. Defendants further allege, in answer to subparagraph (b) of paragraph 6 of the Complaint that Plaintiffs herein would not have been granted absentee ballots if they were temporarily incarcerated in a jail outside of Cook County if the said application for ballot contained the same affidavit of inability of the Plaintiffs to be present at the polls, executed by a deputy warden of the county jail as is the case here, rather than the statutorily required and prescribed affidavits of physicians or Christian Science practitioners.

7.

These Defendants deny each and every allegation contained in paragraph 7 of the Complaint.

8.

These Defendants deny each and every allegation contained in paragraph 8 of the Complaint.

WHEREFORE, these Defendants deny that Plaintiffs herein should have the relief requested in the Complaint by them filed, or any other relief, and respectfully demand that this cause be dismissed.

COUNT II

1.

The Defendants deny each and every allegation contained in paragraph 1, Count II of the Complaint.

2.-4.

The Defendants incorporate and re-allege the answers made and contained in paragraph 2, 3, and 4 of Count I, as and for paragraphs 2 through 4 of Count II.

5.

The Defendants admit that they denied Plaintiffs' applications for absentee ballots. Defendants allege that said refusal was based upon strict compliance with the statutes of the State of Illinois in such cases made and provided, to-wit: Chapter 46, Article 19, Sections 1, 2, and 3, Article 29A, Sections 1, 2, and 5, Illinois Revised Statutes (1965).

6.

The Defendants admit each and every allegation contained in paragraph 6 of the Complaint.

7.

The Defendants admit each and every allegation contained in paragraph 7 of the Complaint.

8.

The Defendants deny each and every allegation contained in paragraph 8 of the Complaint.

9.

The Defendants deny each and every allegation contained in paragraph 9 of the Complaint. Defendants allege that the applications for absentee ballots herein filed by Plaintiffs were not in the requisite statutory form and that Defendants' refusal to grant said applications was in strict compliance and conformity with the Statutes of the State of Illinois.

10.

The Defendants deny each and every allegation contained in paragraph 10 of the Complaint.

WHEREFORE, these Defendants deny that Plaintiffs herein should have the relief requested in the Complaint by them filed, or any other relief, and respectfully demand that this cause be dismissed.

Respectfully submitted,

/s/ Stanley T. Kusper, Jr.
Attorney for Defendants

STANLEY T. KUSPER, JR.
Attorney for Defendants
Room 308 City Hall
Chicago, Illinois 60602
DE 2-3050

OF COUNSEL:

MATTHEW J. BEEMSTERBOER
Attorney at Law
2428 Vermont
Blue Island, Illinois
FU 5-5500.

UNITED STATES OF AMERICA)
) SS
NORTHERN DISTRICT OF ILLINOIS)

AFFIDAVIT

SIDNEY T. HOLZMAN, being first duly sworn upon his oath, deposes and says that he is one of the Defendants in this action, that he has read the foregoing answer by him subscribed, that he knows the contents thereof, and that the same are true in substance and in fact.

/s/ Sidney T. Holzman
SIDNEY T. HOLZMAN

Subscribed and Sworn to
before me this 18th day
of April, A.D., 1967

/s/ Stephanie Stecki
Notary Public

[SEAL]

UNITED STATES OF AMERICA)
) SS
NORTHERN DISTRICT OF ILLINOIS)

AFFIDAVIT

MARIE H. SUTHERS, being first duly sworn upon her oath, deposes and says that she is one of the Defendants in this action, that she has read the foregoing answer by her subscribed, that she knows the contents thereof, and that the same are true in substance and in fact.

/s/ Marie H. Suthers
MARIE H. SUTHERS

Subscribed and Sworn to
before me this 18th day
of April, A.D., 1967

/s/ Stephanie Stecki
Notary Public

[SEAL]

UNITED STATES OF AMERICA)
) ss
NORTHERN DISTRICT OF ILLINOIS)

AFFIDAVIT

FRANCIS P. CANARY, being first duly sworn upon his oath, deposes and says that he is one of the Defendants in this action, that he has read the foregoing answer by him subscribed, that he knows the contents thereof, and that the same are true in substance and in fact.

/s/ Francis P. Canary
FRANCIS P. CANARY

Subscribed and Sworn to
before me this 18th day
of April, A.D., 1967.

/s/ Stephanie Stecki
Notary Public

[SEAL]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 67 C 494

SAM L. MCDONALD and ANDREW BYRD, on behalf of themselves and all other persons similarly situated, PLAINTIFFS

vs.

BOARD OF ELECTION COMMISSIONERS OF CHICAGO, SIDNEY T. HOLZMAN, Chairman, MARIE H. SUTHERS, Commissioner, and FRANCIS P. CANARY, Commissioner, DEFENDANTS

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT—
Filed May 25, 1967

Plaintiffs, SAM L. McDONALD and ANDREW BYRD, on behalf of themselves and all other persons similarly situated, by their attorneys, Stanley A. Bass and Melvin B. Goldberg, Civil Legal Aid Service, Cook County Jail, respectfully move, pursuant to Rule 56 (a), Federal Rules of Civil Procedure, for a summary judgment in their favor, declaring that the Illinois statutes applicable to absentee ballots are unconstitutional on their face under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, insofar as they require denial of absentee ballots to plaintiffs and other duly qualified and registered voters in Chicago, Illinois, similarly situated, or in the alternative, declaring that plaintiffs and other persons similarly situated are entitled, under the Constitution and Laws of the State of Illinois, to absentee ballots upon timely request; and granting a permanent injunction restraining defendants and their agents from refusing to grant timely applications for absentee ballots made by plaintiffs and other persons similarly situated.

In support of this motion, counsel for plaintiffs state:

1. The allegations of the complaint filed herein have been made under oath by the two named plaintiffs, Sam L. McDonald and Andrew Byrd.

2. Defendants, in their answer, have not controverted the basic material facts, but they have contested the legal conclusions to be derived therefrom.

3. No genuine issue as to any material fact remains to be resolved by an evidentiary hearing or trial.

4. By virtue of the verified complaint, and Exhibits "1" and "2", attached to this motion, plaintiffs are entitled to a summary judgment in their favor, as a matter of law.

WHEREFORE, plaintiffs ever pray that the relief requested in this motion be granted.

Respectfully submitted,

/s/ Stanley A. Bass
STANLEY A. BASS

/s/ Melvin B. Goldberg
MELVIN B. GOLDBERG
Attorneys For Plaintiffs

Of Counsel:

CIVIL LEGAL AID SERVICE
Cook County Jail
Chicago, Illinois 60608
523-0101 ext. 30

UNITED STATES OF AMERICA)
) SS
NORTHERN DISTRICT OF ILLINOIS)

STANLEY A. BASS, being first duly sworn on oath, deposes and says: I caused the above motion for summary judgment to be prepared, and know the contents thereof to be true to the best of my knowledge, information and belief.

/s/ Stanley A. Bass
Affiant

Subscribed and sworn to
Before me this 24th day
of May, 1967.

/s/ Carrie Beal
Notary Public
My Commission Expires
5-1-70

[SEAL]

EXHIBIT "1"

Cook County Jail
2600 South California Avenue
Chicago, Illinois 60608

March 29, 1967

I, Sam L. McDonald, do hereby authorize attorneys Stanley A. Bass and Melvin B. Goldberg of the Civil Legal Aid Service, Cook County Jail, to represent me and act on my behalf in connection with my application to vote in the Election for Municipal Offices of Chicago, Illinois on April 4, 1967.

/s/ Sam McDonald
Affiant

Subscribed and Sworn to
Before me this 29th day
of March, 1967.

/s/ Carrie Beal
Notary Public
My Commission Expires
5-1-70

EXHIBIT "2"

Cook County Jail
2600 South California Avenue
Chicago, Illinois 60608

March 29, 1967

I, Andrew Byrd, do hereby authorize attorneys Stanley A. Bass and Melvin B. Goldberg of the Civil Legal Aid Service, Cook County Jail, to represent me and act on my behalf in connection with my application to vote in the Election for Municipal Offices in Chicago, Illinois on April 4, 1967.

/s/ Andrew Byrd
Affiant

Subscribed and Sworn to
Before me this 29th day
of March, 1967.

/s/ Carrie Beal
Notary Public
My Commission Expires
5-1-70

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 67 C 494

SAM L. MCDONALD and ANDREW BYRD on behalf of themselves and all other persons similarly situated, PLAINTIFFS

vs.

BOARD OF ELECTION COMMISSIONERS OF CHICAGO, SIDNEY T. HOLZMAN, Chairman, MARIE H. SUTHERS, Commissioner, and FRANCIS P. CANARY, Commissioner, DEFENDANTS

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT—
Filed July 31, 1967

Defendants, BOARD OF ELECTION COMMISSIONERS OF CHICAGO, SIDNEY T. HOLZMAN, Chairman, MARIE H. SUTHERS, Commissioner, and FRANCIS P. CANARY, Commissioner, by Stanley T. Kusper, Jr., and Matthew J. Beemsterboer, their Attorneys, respectfully move pursuant to Rule 56 (b), of the Federal Rules of Civil Procedure, for a summary Judgment in their favor and against the plaintiff and in support thereof, present the affidavit of SIDNEY T. HOLZMAN.

Respectfully submitted,

/s/ Stanley T. Kusper, Jr.

/s/ Matthew J. Beemsterboer
Attorneys for Defendants

STANLEY T. KUSPER, JR.
Room 308—City Hall
Chicago, Illinois
Tele: De-2-3050

MATTHEW J. BEEMSTERBOER
2428 W. Vermont Street
Blue Island, Illinois
Tele: 385-5500
Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 67 C 494

SAM L. MCDONALD and ANDREW BYRD on behalf of themselves and all other persons similarly situated, PLAINTIFFS

vs.

BOARD OF ELECTION COMMISSIONERS OF CHICAGO, SIDNEY T. HOLZMAN, Chairman, MARIE H. SUTHERS, Commissioner, and FRANCIS P. CANARY, Commissioner, DEFENDANTS

AFFIDAVIT IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT—Filed July 31, 1967

I, SIDNEY T. HOLZMAN, Chairman of the Board of Election Commissioners, of the City of Chicago, one of the defendants herein, being first duly sworn upon oath, depose and say that I have personal knowledge of the facts hereinafter set forth and that if sworn as a witness, I could testify competently thereto. I further say that:

1. I admit the allegations contained in Paragraphs 1, 2 and 3 of the affidavit of Stanley A. Bass in support of plaintiffs' motion for summary judgment.

2. Neither of the named plaintiffs submitted the affidavit of attending physician or affidavit of attending Christian Science Practitioner required by Sections 19-2 and 19-3 of Chapter 46, Illinois Revised Statutes (1965) required at a condition for the issuance of an absentee ballot.

3. I deny that plaintiffs are entitled to summary judgment or any other relief.

4. That I refused to authorize the issuance of absentee ballots to the named plaintiffs rather than violate my statutory duties and subject myself to prosecution for an infamous crime punishable by imprisonment not to exceed

five years in the penitentiary and/or a fine of not to exceed $5,000.00 pursuant to the provisions of Section 29 A-1 and 29 A-5 of Chapter 46 Illinois Revised Statutes (1965).

5. That I will grant future applications for absentee ballots unaccompanied by required affidavit made by or on behalf of the named plaintiffs or other similarly situated only when compelled to do so by compulsory process of a court of competent jurisdiction, as I have done on three previous occasions.

/s/ Sidney T. Holzman
SIDNEY T. HOLZMAN

Subscribed and sworn to before me this 31st day of July, 1967.

/s/ Stephanie Stecki
Notary Public

[SEAL]

STANLEY T. KUSPER, JR.
Room 308—City Hall
Chicago, Illinois
De-2-3050

MATTHEW J. BEEMSTERBOER
2428 Vermont Street
Blue Island, Illinois
385-5500
Attorneys for Defendants

IN UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Name of Presiding Judge, Honorable CASTLE, HOFFMAN and AUSTIN.

Cause No. 67 C 494 Date Dec. 11, 1967

Title of Cause MCDONALD, ET AL. vs. BOARD OF ELECTION COMMISSIONERS, ET AL.

Brief Statement of Motion Advisement

Opinion

The rules of this court require counsel to furnish the names of all parties entitled to notice of the entry of an order and the names and addresses of their attorneys. Please do this immediately below (separate lists may be appended).

Names and Addresses of moving counsel _____

Representing _____

Names and Addresses of other counsel entitled to notice and names of parties they represent _____

Reserve space below for notations by minute clerk
Pursuant to opinion filed herein this day Pltffs' motion for summ judg denied—Defts' motion for summ judg granted and complt is dismd.

Hand this memorandum to the Clerk.

Counsel will not rise to address the Court until motion has been called.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 67 C 494

SAM L. MCDONALD and ANDREW BYRD on behalf of themselves and all other persons similarly situated, PLAINTIFFS

vs.

BOARD OF ELECTION COMMISSIONERS OF CHICAGO, SIDNEY T. HOLZMAN, Chairman, MARIE H. SUTHERS, Commissioner, and FRANCIS P. CANARY, Commissioner, DEFENDANTS

BEFORE: Castle, Circuit Judge, and Hoffman and Austin, District Judges.

OPINION—Filed December 11, 1967

Austin, District Judge.

This action seeks to enjoin the enforcement of the Illinois Election Code because it is unconstitutional insofar as the absentee ballot provisions thereof and defendants' administration thereunder exclude the plaintiffs and others similarly situated from that class of persons entitled to such ballots because of "physical incapacity" to appear at the polls on any election day. Chapter 46, §§ 19-1, 19-2 and 19-3, Ill. Rev. Stats. It is urged that such exclusion violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States because a classification between the voters who are medically incapacitated and voters who are judicially incapacitated, by reason of commitment to jail on election day, is arbitrary and an invidious discrimination, and bears no rational or reasonable relation to the salutary purpose of granting absentee ballots to all qualified registered voters who are incapable of being present at the polls on election day.

Plaintiffs and the class they represent are unsentenced inmates confined in the Cook County Jail who cannot appear at the polls either because they are charged with nonbailable offenses or because they have been unable to post the bail imposed by the courts of Illinois. The plaintiff McDonald, who is still awaiting trial, has been charged with the offense of murder and is being held without bail; the plaintiff Byrd, who has since the filing of the complaint been discharged, had been held because of his inability to post the $5,000 bond. Understandably, plaintiffs do not contend that the operation of the bail bond system impinges upon, or results in a constitutional deprivation of, their right to absentee voting privileges.

The named plaintiffs seeking to exercise the voting privilege at an election which was to be held on April 4, 1967, made timely application for absentee Ballots on March 29, 1967 because of their physical inability to appear at the polls on election day. Said applications were accompanied by an affidavit of the Warden of Cook County Jail attesting to such inability. These applications were refused by defendants because their "physical incapacity" did not bring them within the class of persons covered by §§ 19-1, 19-2 and 19-3 of the Illinois statute. Defendants assert that to have honored such requests would subject them to possible imprisonment for a term of five years and/or a fine not to exceed $5,000. Chapter 46, §§ 29A-1, 29A-5, Ill. Rev. Stats. The instant complaint was filed on March 29, 1967. On March 30, 1967, on the basis of *McDonald* v. *Board of Election Commissioners of Chicago*, 265 F. Supp. 816 (D.C. Ill., 1967), this court, before a three-judge court was convened, ordered defendants to issue the ballots requested so that they could be cast in the April 4 election. Both parties have filed motions for summary judgment.

Section 19-1 of the Election Code identifies those persons to whom absentee ballots must be given. They are:

> "Any qualified elector . . . who expects to be absent from the county in which he is a qualified elector or who because of physical incapacity or the tenets of his religion in the observance of a religious holiday

will be unable to be present at the polls on the day of holding of any special, general or primary election . . . may vote at such election as hereinafter in this Article provided."

Section 19-2 provides for the time and manner in which such application must be made. The requirement pertinent to our question is as follows:

> "* * * any such elector who will be absent because of physical incapacity shall submit with his application the certificate of his duly licensed attending physician or a Christian Science practitioner living and residing in the State of Illinois, . . . to the fact that such elector is so physically incapacitated."

Section 19-3 sets forth the format of the applications and the affidavits which must accompany applications for electors qualifying for absentee ballots.

The classes of persons covered by these sections are: (1) those absent from the county, (2) those physically incapacitated, and (3) those whose observance of a religious holiday prevents attendance at the polls. We are concerned with the category of those who are physically incapacitated.

In resolving the issue before us it is helpful to review some of the legislative developments which underlie the grant of absentee voting. Prior to 1917 the Illinois statutes contained no provision for absentee voting and Illinois voters were required to be physically present in order to cast their vote on election day. In 1917 the legislature granted to qualified electors the privilege of absentee voting if they expected to be absent from the county because of their business or duties; and in 1944 that restriction was removed and absence from the county for whatever reason entitled an elector to an absentee ballot. All other qualified electors were still required to appear personally at the polls in order to vote. In 1955 the privilege of casting absentee ballots was extended to those who would be unable to be present because of physical incapacity provided such physical incapacity was attested to by an attending licensed physician or Christian Science practitioner. All other qualified voters, not absent from the

county or physically incapacitated, were required to appear personally at the polls in order to vote. Again, in 1961 the privilege was extended to include those qualified electors whose tenets of religion in the observance of a religious holiday prevented attendance at the polls.

It is conceded by the plaintiffs that the privilege of absentee voting is one within the legislative power to grant or withhold. See also *Hilliard* v. *Park*, 370 S.W. (2d) 829 (Sup. Ct. Tenn., 1963); *Hallahan* v. *Mittlebeeler*, 373 S.W. (2d) 727 (Ky. Ct. App., 1964). Nevertheless, as plaintiffs state, in the exercise of such power to classify persons to whom such privilege is given, no legislature may enact laws which unreasonably and arbitrarily discriminate between persons and thereby deny the equal protection secured by the Fourteenth Amendment to the federal Constitution. Such classification must be reasonable in the light of the statutory purpose. *MaLaughlin* v. *Florida*, 379 U.S. 184, 191 (1964).

It is necessary at the outset that we determine the class of Illinois voter encompassed within the phrase "physical incapacity" as used in § 19-1 of the Election Code. In construing a statute, it is a familiar rule of construction that the intention or meaning of a statute is to be determined not from any single portion, part or section thereof. All the material parts of the statute and all of its provisions and sections are to be considered together. It is the intent as deduced from the whole which governs over that of a particular part or parts considered separately. *Hilliard* v. *Park*, *supra*. Sections 19-2 and 19-3, being in *pari materia* with § 19-1, must also be referred to in order to ascertain the intent of the Illinois legislature. Section 19-2 expressly provides that an elector "absent because of physical incapacity shall submit with his application the certificate of his duly licensed attending physician . . . to the fact of his physical incapacity." And, § 19-3 delineates the forms which shall be substantially followed. These include forms of affidavits by physicians and Christian Science practitioners attesting to the fact that the voter "will be physically incapable of being present at the polls . . . for the following reasons. No form has been provided for an affidavit of an administrator of

a penal institution attesting to the fact that a prisoner "will be physically incapable of being present at the polls . . . for the following reasons." It is also a rule of statutory construction that where a statute enumerates persons affected, it must be construed as excluding from its effect all those not expressly mentioned.

Section 19-1, together with §§ 19-2 and 19-3, persuade us that the class intended to be covered by the phrase "physical incapacity" includes only those voters who for medical reasons are unable to be present at the polls.

For that reason, with regard to Count II of the complaint, we hold that defendants refusal to accept a certificate from the Warden of the Cook County Jail in which the plaintiffs are incarcerated, in lieu of the certificate required by Section 19-2, is a proper interpretation by the Board of Election Commissioners.

It must next be determined whether such a classification by the Illinois legislature is a reasonable one. We do not have the benefit of any Illinois state court decision on this precise point. Three decisions which considered the reasonableness of absentee voter classifications held the classifications created by the particular state statutes to be reasonable and the laws therefore valid exercises of legislative authority.

In *Straughan* v. *Meyers*, 187 S.W. (2d) 1159 (1916), the Supreme Court of Missouri was concerned with a statute which limited the grant of absentee ballots to railroad employees, traveling salesman, and other persons who because of their duties or occupations would be absent from their voting precincts on election day. The privilege of absentee voting was not extended to other electors. In upholding the constitutionality of the limited grant, the court held that because the provision applied alike to all persons who by reason of their business duties were unavoidably absent from the county, it did not come within the purview of prohibited class legislation.

In *Lemons* v. *Noller*, 63 P. (2d) 177 (1936) the Supreme Court of Kansas considered and rejected numerous arguments contesting the validity of a statutory provision which granted the privilege of absentee voting to voters absent from the state. Under the Kansas Election Code,

a voter who was physically disabled and in the state on election day could not obtain an absentee ballot. However, if the voter were absent from the state he could obtain an absentee ballot, whether or not he was physically disabled. Therefore, one of the arguments made was that the classification of absentee voters was unreasonable because voters who are physically disabled and absent from the state on election day could vote by virtue of the fact that they are absent from the state, while voters who are physically disabled and in the state on election day could not vote. The court rejected this argument and held the law constitutional for the reason that such classification was not unreasonable even though it conferred political rights on some to the exclusion of others.

In *Hallahan* v. *Mittlebeeler*, 373 S.W. (2d) 726 (1963) the Court of Appeals of Kentucky interpreted a provision of the state Constitution providing "any person absent from the county of his legal residence, or from the state, may be permitted to vote in a manner provided by law" together with a subsequently enacted statute defining an absentee voter as

> ". . . any qualified voter in the United States services, or bona fide, full time student in residence at an educational institution who expects to be absent from the county . . ."

It was argued that when the legislature grants the privilege of absentee voting it must be extended to every qualified voter who is absent from the county of his residence on election day. The Kentucky court determined that the statute did not violate either the federal or state Constitutions, did not deprive any one of his right to vote, did not impinge upon constitutional guarantees of free and equal elections, and did not constitute special legislation merely because the privilege was extended to only two reasonably qualified groups properly designated as recipients thereof.

We hold that the provisions of the Illinois Election Code which extend absentee voting privileges to those persons who are physically incapacitated because of medi-

cal reasons from appearing at the polls to be a proper and reasonable legislative classification not violative of the Equal Protection Clause of the Fourteenth Amendment.

An order this day has been entered denying plaintiffs' motion for summary judgment, granting defendants' motion for summary judgment, and dismissing the complaint.

/s/ Latham Castle
Judge, United States Court of Appeals

/s/ Julius J. Hoffman
Judge, United States District Court

/s/ Richard B. Austin
Judge, United States District Court

DATED: December 11, 1967

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 67 C 494

SAM L. MCDONALD and ANDREW BYRD on behalf of themselves and all other persons similarly situated, PLAINTIFFS

vs.

BOARD OF ELECTION COMMISSIONERS OF CHICAGO, SIDNEY T. HOLZMAN, Chairman, MARIE H. SUTHERS, Commissioner, and FRANCIS P. CANARY, Commissioner, DEFENDANTS

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed December 21, 1967

I. Notice is hereby given that Sam L. McDonald and Andrew Byrd, on behalf of themselves and all other persons similarly situated, plaintiffs above named, hereby appeal to the Supreme Court of the United States from the final order entered in this action on December 11, 1967, granting defendants' motion for summary judgment, and dismissing the complaint.

This appeal is taken pursuant to 28 U.S.C.A. § 1253.

II. The clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Complaint
2. Answer
3. Plaintiff's motion for summary judgment
4. Defendant's motion for summary judgment
5. Affidavit in support of defendants' motion for summary judgment
6. Order dated December 11, 1967 granting defendant's motion for summary judgment and dismissing the complaint
7. Opinion filed December 11, 1967
8. Notice of Appeal

III. The following questions are presented by this appeal:

1. Is Equal Protection of the Laws met by Illinois statutes which grant an absentee ballot to a person who is unable to be present at the polls on election day because of either absence from the county, physical incapacity for medical reasons or observance of a religious holiday, but which deny an absentee ballot to a registered and qualified voter who is actually unable to be present at the polls on election day because of judicial commitment to jail in the county of his residence, while awaiting preliminary hearing or trial on an alleged criminal charge?

2. Does refusal by one branch of government, an election board, to grant an absentee ballot to a registered and qualified voter who is actually unable to be present at the polls on election day because of commitment to jail by another branch of government, the judiciary, due to financial inability to provide monetary bail, while awaiting preliminary hearing or trial, effectively constitute deprivation of the right to vote based upon poverty, which this Court held invalid in *Harper* v. *Virginia Board of Elections*, 383 U.S. 663 (1966)?

/s/ Stanley A. Bass
STANLEY A. BASS
Attorney For Plaintiffs
11 South LaSalle Street
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Of Counsel:
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Legal Aid Bureau
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[Proof of Service Omitted in Printing]

SUPREME COURT OF THE UNITED STATES

No. 1320 Misc., October Term, 1967

SAM L. MCDONALD, ET AL., APPELLANTS

v.

BOARD OF ELECTION COMMISSIONERS OF CHICAGO, ET AL.

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis,

IT IS ORDERED by this Court that the said motion be, and the same is hereby, granted.

April 29, 1968

SUPREME COURT OF THE UNITED STATES

No. 1320 Misc., October Term, 1967

SAM L. MCDONALD, ET AL., APPELLANTS

v.

BOARD OF ELECTION COMMISSIONERS OF CHICAGO, ET AL.

APPEAL from the United States District Court for the Northern District of Illinois.

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits. The case is transferred to the appellate docket as No. 1372 and placed on the summary calendar.

April 29, 1968

☆ U. S. GOVERNMENT PRINTING OFFICE: 1968 307791 798